

## REMARKS

The following remarks and the above amendments are submitted to address all issues in this case, and to put this case in condition for allowance. The claims are amended solely to better define the subject matter of the instant invention and do not add any new matter. After the above amendment, application claims 14, 17, 21-22, 24-25, 27-29, and 31-32 are pending in the application. Application claim 14 is the only independent claim.

The Examiner is thanked for the courtesy of the Interviews of December 16, 2005 and January 26, 2006 which are referred to herein.

Applicant has studied the Office Action Mailed September 20, 2005 and has the following remarks.

### **35 U.S.C. §103**

The Examiner has rejected the prior claims in light of the combination of Waters et al (4,344,505) in view of Brush Jr. et al (4,048,926). Dependent claims were further rejected in light of the above combination further in view of Fier (4,302,126), Sciambi et al (4,591,022), Anghinetti et al (3,896,595), Fuller (4,281,743), Porter (5,628,158), and/or Daw et al (4,832,153).

The cited references fail to show a number of claim elements, many are non-analogous art, the non-obviousness of the instant claims is indicated by secondary considerations, and the Examiner has still not provided any motivation to combine.

### **Waters and Brush Jr.**

Claim 14, as amended, provides a combination of an existing attic access and an insulating cover, the insulating cover comprising two separable parts: a continuous frame

defining a frame opening and adapted to surround the existing attic access opening and a removable closure member having an upper portion and depending central portion which interfaces with the continuous frame to form two generally orthogonal seals. A first seal is inside the opening of the continuous frame, the second seal is outside the opening on the upper surface of the frame. When the two seals are broken, the frame and removable closure member detach allowing the parts to be separated from each other.

As independent claim 14 only stands rejected in light of the combination of Waters and Brush Jr. and all other claims depend from claim 14, if claim 14 is allowable over the combination of Waters and Brush Jr. then all claims should be considered allowable in light of all cited references. Claim 14 is believed allowable over the combination of Waters and Brush Jr. as the combination fails to suggest a number of elements of claim 14 and, even if those elements were shown, the Examiner has still failed to present any motivation to combine.

The combination of Waters and Brush Jr. fails to show two seals

The combination of Waters and Brush Jr. fails to provide for a device having two seals, one internal to the opening and one external to the opening. The Examiner has admitted that Waters “does not show the closure member being complementary to and snugly seats within the frame to create a first continuous seal.” The Examiner clarified this argument during the first of the above referenced Interviews by asserting that Waters does show what is the second seal of the instant claims, but does not show the first seal.

The Examiner finds the missing element in Brush Jr. stating that Brush Jr. has “a closure member having a body portion having a depending central body portion (12) of a size to complementary fit within the frame (41,38).”

Applicant respectfully traverses, as even if two seals are shown between the references (one internal to the opening (Brush Jr.) and one external to the opening (Waters)), the combination still fails because neither reference indicates that more than the one seal they show is desirable and, in fact, both references generally indicate that their single seal is sufficient. There is, therefore, absolutely no motivation provided within the references themselves to combine the references. Further, the combination would not work because the openings of the “frames” of Waters and Brush Jr. are of inconsistent shapes meaning the combination would still only provide a single seal.

The Examiner apparently attaches the door of Brush Jr. to the door of Waters (as otherwise there is no frame as discussed below). In this combination, however, the Brush Jr. door would fail to create the first seal with the inside of the frame opening of Waters because it slants inward, while the frame of Waters is square on the inside.

The combination fails to show orthogonal seals and modification would defeat the functionality of Waters and Brush Jr.

Even if both seals could somehow be formed, they would still clearly not be orthogonal to each other. The primary seal of Brush Jr. slants inward and therefore the faces are arranged at four angles relative to its top or bottom. It would therefore be impossible for the seal of Brush Jr. to be orthogonal with the seal of Waters.

Further, the formation of two orthogonal seals using the combination (which is not shown or indicated by the combination), would destroy the functionality of the combination. The device of Waters is designed to be hinged. As has been repeatedly pointed out to the Examiner, a hinged lid would prevent an internal seal from being broken as rotational movement of the lid would not allow the first seal to break. Instead, the face of the recessed portion opposing the

hinges would be driven into the wall portion of the frame with which it seals, and the lid would not open at all.

The combination fails to show the depending central portion

The Examiner asserted, as mentioned above, that the Brush Jr. reference shows a depending central portion. Applicant respectfully asserts that Brush Jr. does not show such a structure. The device of Brush Jr. shows a door which in its entirety fits within the structure of a safe. Waters only shows a door which, in its entirety, fits onto the frame. There is no reason to combine these two separate doors, to form a single door with a depending portion. Each is itself a complete door, neither indicates that it is intended to be a part of a combined door or provides any teaching for forming a door with a depending portion.

The combination does not show a detachable cover member

Even if all the above were considered obvious (and none of them are), the combined hinged lid still does not detach from the frame when the seals are broken. Claim 14 specifically recites that the cover member is not bonded or hinged to the frame, and detaches from the frame when the seals are broken by a force applied to the closure member through the opening. In the first of the above referenced Interviews, the Examiner indicated a desire that claim 14 specifically call out the lack of bonding or hinging between the components to make it clear that a detachable lid can be neither bonded or hinged. The amended claim 14 now includes such language.

Waters shows a hinged lid which is clearly not within the scope of the present claims as it is now expressly excluded. Waters also provides various alternative “caps” principally described in col. 3, lines 10-23, and col. 2, lines 54-56 which are alternative designs of his device. While the alternatives are not clearly described, they apparently provide for alternatives to the hinged

“cover” by making the “cap” of waters as a unified piece. In particular: “rather than providing hinge 14 for attaching the cover 28 to the side wall 22 . . there might be provided a pair of rails along the attic floor. . . to provide sliding movement for moving the cap to the second opened position.” Alternatively, “the cap might be molded as an integral unit instead of fabricated from sheet and/or bar stock.” Waters also contemplates hinging the cap directly to the floor.

The Examiner may assert that such alternatives, used in place of hinging the cover, could allow for the lid of Waters to be detachable. Applicant, however, would respectfully traverse as a cover detachable from the frame is opposed to the teaching of Waters which instead appears to teach a solid assembly detachable or moveable relative to the attic. A common theme in all these alternative structures of Waters is moving the entire cap (the assembly of the instant claims) not the cover 28 relative to the frame. The cap is indicated by reference 10 (which also indicates “block”) and it is discussed that FIG. 3 illustrates how to form a cap.

Applicant asserts that the only logical reading of Waters is that the “cap” is both the cover 28 and all four walls 20, 22, 24, and 26 of the frame combined. Therefore, the only alternatives provided by Waters are that instead of providing a hinged door by which one can pass through the cap, the cap could be entirely moved out of the way to provide access. In effect, these are the same structures as those shown in Fuller and Daw, which show a cap that can be assembled as a unitary structure and placed over the access, the cap being entirely moved out of the way to grant access.

Waters, therefore, provides no teaching for detaching the cover from the frame as a method for passing through the frame when accessing the attic, as is described in the instant claims. Further, such a detachable arrangement would destroy the device of Waters as it would allow the Waters device to become disassembled as the cap was moved. That is, the only

alternative to hinging in Waters would seem to indicate that the cover be affixed or co-molded with the frame in such a manner that they form a unified piece. Applicant would assert that either construction has a cover “bonded” with the frame which is expressly excluded by the instant claims.

Even if a detachable combination was anywhere contemplated in Waters (which it is not), there is still no indication in Waters to have the cover be formed with a depending portion as in the instant claims. In fact, it would appear to be taught away from, as a depending portion in the embodiment of FIG. 2 of Waters would probably interact with the ladder D. Further, such a depending portion would clearly interact with the frame in such a manner as to inhibit the opening of the hinged lid embodiment as discussed above.

Brush Jr., while it shows a detachable door to a safe, cannot be used to show a detachable cover for the frame of Waters because the door of Brush Jr. does not detach from a frame as in the instant case. As discussed in claim 14 and as was discussed with the Examiner in the above referenced Interviews, the frame of the instant case is sized and shaped to correspond to an existing attic opening. The door of Brush detaches from an enclosed, self contained safe which is nowhere indicated to interact with an existing attic opening. Further, as Brush Jr. is directed to a safe it does not discuss the inclusion of an attic access which is used in combination with an insulating cover. It is therefore incapable of providing a removable cover member that meets the described limitations, as it cannot provide a frame and the frame defines structure of the removable cover member.

Brush Jr. is non-analogous art

The instant claims are for a combination of a insulating cover assembly for an attic and an existing attic access. Claim 14, upon which all other claims depend, as amended, now

specifically recites the presence of an existing attic access and that the frame of the cover assembly be sized and shaped to surround an existing attic access opening when placed in an attic. The device of Brush Jr. is a fireproof safe having a door. Brush Jr. is therefore a non-analogous reference.

The Examiner argues that Brush Jr. is reasonably pertinent to the particular problem to which Applicant is concerned. The argument appears to be that both devices are used to seal a structure. Applicant respectfully traverses as the inventions of Applicant and Brush Jr. are concerned with solving separate and quite distinct problems. The problem with which Applicant is concerned is the energy efficiency of a building, particularly with respect to the sealing of existing attic openings. Claim 14, as amended, specifically recites such an existing attic access opening as defined by an existing attic access and that the frame be sized and shaped to surround the existing attic opening. Brush Jr. makes no reference to the use of his safe as an attic sealing structure used in conjunction with an existing attic opening, he discusses a safe for protecting valuables from fire and does not discuss an attic, or attic access, at all. Brush Jr. is therefore non-analogous art to the present attic closure.

### **Other References**

#### **An existing attic hatch does not meet the limitations of the instant claim 14**

While not cited by the Examiner in his September 20, 2005 Office action, the Examiner, during the Interviews, questioned if claim 14 could possibly be read to cover a traditional attic access hatch comprising a hole in the structural construction material forming the ceiling of a building and a plywood sheet seated within the hole (effectively elements 12 and 14 of FIG. 1 of the instant application). While Applicant would assert that such a structure is clearly not the frame and removable closure member of the instant claims, Applicant has further clarified claim

14 to show that there is a combination which includes an insulation assembly including a frame and removable closure member and an existing attic access including a trap door and defining an opening. As the claim now expressly requires the traditional components of an attic hatch in addition to the components of an insulating cover assembly, it is immediately apparent that an existing attic hatch cannot show all elements of claim 14. This should clarify any doubts the Examiner had as to the claims applicability to an existing hatch.

The missing elements of the combination are not provided by the other cited references

Since claim 14 only stands rejected in light of the combination of Waters and Brush Jr., and since the remaining claims all depend from claim 14, if claim 14 is found allowable over the combination of Waters and Brush Jr., all claims should be allowable over the cited references. However, for the sake of completeness, Applicant points out that the remaining references cannot fill in the holes in Waters and Brush Jr. discussed above.

Fier and Porter do not show any form of attic access cover and clearly do not show an attic access. Fier is directed to a support ring to allow a manhole cover to be raised to a different height and Porter shows various arrangements of structural insulated panels. Like Brush Jr. these references are non-analogous. As such, they cannot show the missing seal elements, depending central portion, or detachable frame and lid. Even if the references were to show such elements and were determined to be analogous (which they do and are not), there is no motivation to combine these references with the disclosure of Waters as any such combination would still suffer most of the same fatal flaws as the Waters and Brush Jr. combination.

Anghinetti shows a hinged access hatchway for accessing a roof. This is also not a device for performing of attic insulation and sealing but instead a locking mechanical hatchway. As it also clearly utilizes a hinged construction, it suffers from all the same problems as the



device of Waters and therefore cannot provide the elements already missing from the Waters and Brush combination. Further, as it is an access control device as opposed to an insulation device, it is also arguably non-analogous art.

Daw and Fuller, while they show attic insulation and sealing members, show devices which, when assembled, are designed to form a single piece “cap” that simply rests over the attic access opening. Like the alternative embodiments of Waters, these devices do not have a removable closure member which is designed to separate from the frame when access is required. Instead the devices provide a single piece cap over the attic access opening. While the pieces may not necessarily be glued together (although in at least some embodiments they appear to be), it is quite clear from their designs that the cap is designed to resist detachment of parts (disassembly) when a force is provided through the opening in the frame and often include at least segments of the cover co-molded with portions of the frame, they therefore show bonded structures expressly excluded from the scope of the claim. Further, it is quite clear that they lack the double seal and depending portion.

Sciambi also shows an insulating access cover. The device of Sciambi comprises a folding upper lid which includes a portion of frame. The remaining portion of the cover is then placed so as to be overlaid on the remaining portion of the frame. It is immediately apparent that the Sciambi device fundamentally lacks the continuous frame of the instant device as the frame is expressly shown to be non-continuous. Further, due to the folding arrangement of components, the device necessarily lacks the depending central portion and double seals of the instant claims. Further, at least a portion of the frame is clearly bonded to the cover which is expressly excluded from the scope of claim 14.

### **Additional indications of non-obviousness**

#### The Examiner has not presented any motivation to combine references

In addition to the Applicant's discussion above which show how the cited references fail to show numerous elements of the instant claims and how many references are non-analogous art, Applicant also asserts that the Examiner still has failed to provide motivation to combine the cited references.

The Examiner seems to imply that the suggestion of combination (desirability) is that the resultant product (that is the device of claim 14) seals better and is a better insulator than either product on its own. (the inclusion of elements of Brush Jr. "allows the closure member [of Waters] to better insulate"). This statement does not show motivation to combine, but, in fact, supports Applicant's assertion of patentability. The improvement of the instant claim 14 is suggested by Applicant's disclosure.

Neither Waters nor any other of the cited references indicate that their devices are insufficient insulators because they have only a single seal. Waters clearly does not indicate that modification of the Waters design, by inclusion of a second seal from a depending central portion, to provide more insulation would be desirable, as a depending central portion, or the failure of Waters device to provide sufficient insulation, is nowhere discussed in Waters. The only document which indicates that the inclusion of a second seal from a depending central portion is desirable in an attic closure is Applicant's disclosure.

The Examiner is respectfully reminded that "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." MPEP §2143.1 [emphasis in original], and more

importantly: “The teaching or suggestion to make the claimed combination. . . must. . . be found in the prior art, not in the applicant’s disclosure.” MPEP §2143.

As the sole motivation provided by the Examiner is that the resultant device is an improvement on the prior art, the Examiner has failed to provide any motivation to combine the cited references.

#### Secondary considerations

While Applicant above has shown that the cited art does not and can not form a case for obviousness of the claims, as amended, Applicant has also provided additional support for the non-obviousness of the instant claims in the form of a July 27, 2005 declaration and various associated exhibits. Applicant further encloses a supplemental declaration to provide still further indications that the instant claims are non-obvious.

The combination of both declarations shows that numerous persons skilled in the art have recognized that devices which embody prosecution claim 14 are improvements upon existing designs of attic insulation devices which can be difficult to use and are unsuitable in many applications. These individuals include those who have worked with internationally recognized labs for energy matters and those who are major contractors for important statewide low income projects. They also include numerous experts in the field of home repair and construction. Many of these individuals specifically point out how devices, which embody claim 14, meet needs unsolved by devices with other designs.

These secondary considerations therefore also provide evidence that the claims are non-obvious in light of cited references.

## Conclusion

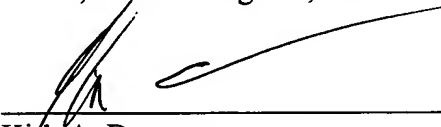
In light of the above remarks, Applicant believes there are no further issues regarding the patentability of the pending claims and respectfully requests the Examiner withdraw his rejections and allow all pending claims so that this case can pass on to issue.

Applicant encloses herewith a petition and petition fee for a two-month extension of time. Applicant believes no additional fees are due in conjunction with this filing, however, the Commissioner is authorized to credit any overpayment or charge any deficiencies necessary for entering this amendment, including any claims fees and/or extension fees to/from our **Deposit Account No. 50-0975**.

If any questions remain, Applicant respectfully requests a telephone call to the below-signed attorney at (314) 444-7783.

Respectfully submitted,  
Lewis, Rice & Fingersh, L.C.

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Kirk A. Damman  
Registration No. 42,461  
Attorney for Applicant

**Customer Number: 22822**  
Lewis, Rice and Fingersh, L.C.  
Attn: Box IP Dept.  
500 N. Broadway, Suite 2000  
St. Louis, MO 63102-2147  
Tel: (314) 444-7600  
Fax: (314) 444-7788